IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFERENCE CASE NO.1 OF 2003

Council of the Institute of Chartered
Accountants of India .. Petitioner

v/s.

R.C.Jain, FCA,
Chartered Accountant,
B-23, 2nd Floor,
Raj Industrial Complex,
Military Road, Marol,
Andheri East,
Mumbai-400 059. .. Respondent

Ms.S.Srikrishna i/by M/s.Kanga & Co. for petitioner.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th October, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

This reference under section 21(5) of the Chartered Accountants Act, 1949 (for short 'Act of 1949') is in respect of R.C.Jain, FCA.

2. On the basis of the information received against R.C.Jain, the fellow member of the Institute of Chartered Accountants of India, the explanation was sought for from him. He sent the written statement and upon consideration thereof, the Council of the Institute of Chartered Accountants of India (the Council) formed the opinion that the said member was guilty of

professional and/or other misconduct and decided to cause an enquiry to be made in the matter by the Disciplinary Committee.

3. The Disciplinary Committee, accordingly, held the enquiry wherein the delinquent admitted the guilt. The delinquent submitted to the Disciplinary Committee to take lenient view and prayed that he may be pardoned. The Disciplinary Committee on conclusion of the enquiry held that the delinquent was guilty of professional misconduct within the meaning of Clause (7) of Part-I of second schedule to the Act of 1949 read with sections 21 and 22 of the said Act. The report was forwarded by the Disciplinary Committee to the Council. The Council considered the report and also the written submissions of the delinquent and recommended to this court that respondent be reprimanded. This is how the reference has come before us.

4. The delinquent was charged with the following misconduct:-

> "The tax audit report dated 28th October, 1995 issued by the Respondent in Form 3CB in respect of the assessee, M/s.M.K.Enterprises, Bombay contains the following declaration given by the Respondent:-
>
> "I/We have examined the balance-sheet of M/s.M.K.Enterprises 94, Sheriff Devji

Street, Bombay-400 003 (Permanent Account No.625-M/Ward 14(9)) as at 31st March, 1995 and the Profit & Loss account for the year ended on that date which are in agreement with the books of account maintained at the head office as above and the branches at-.

I/We have obtained all the information and explanations which to the best of my/our knowledge and belief were necessary for the purposes of the audit. In my/our opinion, proper books of account have been kept by the head office and the branches of the assessee so far as appears from my/our examination of books, subject to the comments given below:- Refer Notes to Accounts

In my/our opinion and to the best of my/our information and according to explanations given to me/us, the said accounts give a true and fair view-

(i) in the case of the Balance Sheet, of the state of the above named assessee's affairs as at 31st March, 1995 and

(ii) in the case of the Profit & Loss Account, of the profit or loss of the above named assessee for the accounting year ending on 31st March, 1995.

The prescribed particulars are furnished in Form No.3CD annexed hereto. In my/our opinion and to the best of my/our information and according to explanations as given to me/us, these are true and correct."

The above-mentioned certificate was issued by the Respondent without obtaining relevant information and proper examination/verification of Balance-sheet and Profit & Loss Account. As per information received, the Respondent had admitted in his statement dated 23rd November, 1995 under Section 131 of the Income-tax Act, 1961 that he had signed the said tax audit report without signing the Balance-sheet and Profit & Loss account."

5. It does appear that certificate was issued by the delinquent without proper verification. The relevant information was also wanting. However, the delinquent was candid and admitted his guilt. The Council took these aspects into consideration and has recommended that the delinquent-respondent be reprimanded.

6. We accept the recommendation of the Council and reprimand the respondent for the misconduct proved against him. No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)